

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 119**

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**Introduced by Senator Calderon**

January 17, 2013

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An act to amend Section 8344.5 of, and to add Section 8344.6 to, the Health and Safety Code, relating to ~~crematories, and declaring the urgency thereof, to take effect immediately.~~ *crematories.*

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Calderon. Crematories: burning of flags.

Existing law provides that a crematory regulated by the Cemetery and Funeral Bureau shall knowingly cremate only human remains in cremation chambers, along with cremation containers, items used for disease control, and personal effects of the deceased.

This bill additionally would authorize the incineration of one or more American flags, performed separately from the cremation of human remains and in accordance with specified federal law, during the periods within one week before or after specified holidays. The bill would require a crematory to record and maintain on its premises for at least 10 years prescribed information regarding the incineration of American flags. The bill would declare that it would not be construed to restrict or infringe upon any person's First Amendment rights, as specified.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 8344.5 of the Health and Safety Code is amended to read:

8344.5. (a) Except as provided in subdivision (b), a crematory regulated by the Cemetery and Funeral Bureau shall knowingly cremate only human remains in cremation chambers, along with the cremation container, personal effects of the deceased, and no more than a negligible amount of chlorinated plastic pouches utilized for disease control when necessary.

(b) (1) Notwithstanding any other law, a crematory regulated by the Cemetery and Funeral Bureau also may incinerate one or more American flags, under the following conditions:

(A) Incineration of the flag or flags is performed separately from the cremation of human remains, as provided in subdivision (a).

(B) Incineration of the flag or flags is in accordance with Section 8(k) of Title 4 of the United States Code.

(C) Incineration of the flag or flags occurs within one week before or after any of the following:

(i) Memorial Day.

(ii) Flag Day.

(iii) Independence Day.

(2) Nothing in this subdivision shall be construed to attempt to restrict or otherwise infringe upon any person's right to free expression under the First Amendment to the United States Constitution.

SEC. 2. Section 8344.6 is added to the Health and Safety Code, to read:

8344.6. (a) A crematory that incinerates an American flag or flags pursuant to Section 8344.5 shall maintain on its premises an accurate record of all American flags incinerated as specified in Section 8344.5, including all of the following information:

(1) Name of the organization or person requesting incineration of the flag or flags.

(2) Date of incineration of the flag or flags.

(3) Name of the cremation chamber operator.

(4) Time and date that the flag or flags were inserted in the cremation chamber.

1 (5) Time and date that the flag or flags were removed from the  
2 cremation chamber.

3 (6) Weight of the ashes of the flag or flags after being removed  
4 from the cremation chamber.

5 (7) Disposition of the ashes of the incinerated flag or flags.

6 (b) This information shall be maintained in the crematory log  
7 for at least 10 years after the incineration of an American flag or  
8 flags and shall be subject to inspection by the Cemetery and  
9 Funeral Bureau.

10 ~~SEC. 3. This act is an urgency statute necessary for the~~  
11 ~~immediate preservation of the public peace, health, or safety within~~  
12 ~~the meaning of Article IV of the Constitution and shall go into~~  
13 ~~immediate effect. The facts constituting the necessity are:~~

14 ~~In order to ensure that appropriate state agencies have clear~~  
15 ~~direction with respect to the regulation of crematories, and that~~  
16 ~~crematories operating under state law are adequately protected at~~  
17 ~~the earliest possible time, it is necessary that this act take effect~~  
18 ~~immediately.~~